IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2662 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ZAKIR HUSSAIN AKBAR SHAH

Versus

CIVIL SUPPLY OFFICER VALSAD

Appearance:

MR BA SURTI for Petitioner

Mrs. Siddhi Talati, AGP for Respondents.

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 22/03/2001

ORAL JUDGEMENT

This is a petition under Article 227 of the Constitution of India filed by the petitioner challenging the order of the revisional authority (Annexure "F") cancelling licence of the petitioner, which had been granted to him under Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981.

2. This litigation has a chequered history. The petitioner holds a licence under the aforesaid Order for

the sale of kerosene as a retailer.

2.1. The petitioner was intercepted while travelling in tempo No. GJ-15-T-866 near Udwada Railway Crossing, by Police Sub-Inspector, LCB, Valsad, and it was found that the said tempo was carrying 14 barrels of kerosene. Since the terms of the licence issued to the petitioner permitted only the sale of the authorised stock of kerosene as a retailer from the fixed address of business, transportation of this quantity of kerosene, which was not the official stock held by the petitioner, was contrary to the terms and conditions of the licence. The Civil Supplies Officer also thereafter took an inspection of the petitioner's licensed premises when various other irregularities were noticed. The petitioner was thereupon issued a show cause notice as to why his licence should not be cancelled. The petitioner submitted his written reply to the said show cause notice. Ultimately proceedings were taken as a result of which the Civil Supplies Officer cancelled the licence of the petitioner. Being aggrieved by the aforesaid order (Annexure "B") the petitioner filed an appeal to the appellate authority which was also dismissed by order dated 8th June 1995 (Annexure "C"). The petitioner challenged the aforesaid order by filing the revision before the Government. In revision the revisional authority found, for the reasons recorded in the said order, that the matter requires to be remanded to the appellate authority for reconsideration. Accordingly the matter went back to the appellate authority namely the Collector who once again passed a fresh order (Annexure "E") and once again by a speaking order cancelled the licence of the petitioner. Once again the petitioner preferred a revision before the State Government and once again this revision was rejected (by order at Annexure "F"). Hence the present petition.

3. Before proceeding further on the merits of the matter, it is desirable to keep in mind the observations of the Supreme Court in the case of Mohmmad Yunus Vs. Mohammad Mustaqim (AIR 1984 SC 38) and Khali Ahmed Bashir Vs. Tufelhussein S. Sarangpurwala (AIR 1988 SC 184), on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution. The Supreme Court has observed in the aforesaid two cases that the High Court, while examining a petition under Article 227 of the Constitution of India, cannot reappreciate the evidence and cannot disturb the findings of fact recorded by the courts below except where the same are perverse, and even errors of law cannot be corrected. Suffice it to say that this Court cannot

enter into the quality of the decisions rendered; at best, it may only examine the decision making process adopted by the fora below.

3.1. Learned counsel for the petitioner urged that the impugned orders are bad in law inasmuch as the concerned authorities have relied upon such papers, documents and other evidentiary material for arriving at a conclusion and findings of fact against the petitioner, copies of which documents have not been supplied to the petitioner. In other words, the petitioner contends that the concerned authorities have relied upon evidentiary material behind the back of the petitioner and that therefore he has been deprived of an opportunity of presenting a legitimate defence, and denial of such an opportunity is violative of the principles of natural justice.

3.2. To substantiate his contention learned counsel for the petitioner relies upon the decision of this Court reported at 1996 (2) G.L.R. Page 127, also followed by a decision in Special Civil Application No. 4339 of 1997 decided on 30th of September 1998 (Coram: C.K. Buch, J.).

4. There can be no serious controversy as to the principles laid down in the aforesaid decision.

4.1. However, the law applicable to a fact situation has to be applied to the facts of each particular and individual case, as a distinct and separate case.

4.2. No doubt the impugned orders contain an extensive discussion of other papers and documents (other than the show cause notice, which admittedly was received by the petitioner). However, it would be a fallacy, and it would also amount to a serious misinterpretation of the impugned orders, if it were to be suggested that the charges levelled against the petitioner were upheld either by relying upon such documents or by treating them as material evidence against the petitioner. Merely because reference has been made in the impugned orders, only by way of incidental developments arising from the interception of the tempo by the police, it would be fallacious to urge that the entire investigation and/or papers and/or statements which came into existence as a result of the investigation and during the course of the investigation, are all documents upon which the department has relied upon in order to sustain the charges against the petitioner.

5. The short question which requires consideration,

if the correct perspective is applied to the allegations as levelled against the petitioner, is whether the allegations made against the petitioner have been sustained or are sustainable without reference to such extraneous material.

5.1. There is no controversy that the show cause notice was served upon and received by the petitioner. There is no doubt that the show cause notice contains specific allegations. It may be that most of the allegations may be of a minor and technical nature. However, what cannot be ignored, is that the said show cause notice specifically avers that the petitioner was engaged in the transportation of 14 barrels of kerosene when he was intercepted travelling along with such kerosene in the tempo. There cannot be any doubt and in fact there is no dispute that the petitioner has admitted in his reply to the Show Cause Notice that the rickshaw in which he was travelling along with 14 barrels of kerosene was in fact intercepted by the police. There cannot be any dispute and in fact there is no dispute, that the petitioner hold a licence for only retail business, from a fixed address. Thus, the transportation of 14 barrels of kerosene far away from his retail outlet would violate the principal terms of his licence. The only defence put up by the petitioner in this context is that he was not the owner of the kerosene, which was being transported in the tempo in which he was travelling but it belonged to some one else namely Badra Petroleum Products, Valsad. The relevant consideration in the context of this defence is as to whether the petitioner has proved his defence by establishing that the quantity of kerosene being transported by him belonged to the said party or any other person ? It is on this aspect that the petitioner has miserably failed to establish his defence. The petitioner failed to establish that the 14 barrels of kerosene being transported by him belonged either to the said Badra Petroleum Products and also failed to show that it belonged to some one else. It therefore necessarily follows that, since the terms of the licence issued to the petitioner permitted only retail business from a fixed business outlet, the transportation of kerosene in bulk clearly violated the terms and conditions of the licence. The authorities were therefore justified in coming to the conclusion that the charges levelled against the petitioner were established.

6. It is not necessary to discuss herein in greater detail the other minor irregularities which have also been found proved against the petitioner. Suffice it to

say that once it is found that the petitioner is indulging in a wholesale and illegal transportation of an essential commodity such as kerosene, and also grossly violating one of the major conditions of his licence, the cancellation of such a licence is amply justified.

7. Consequently, the orders impugned in the present petition require to be sustained. It is so found and held. Consequently, there is no substance in the present petition and the same is accordingly dismissed. Rule discharged with no order as to costs.

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rmr.